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GUIDE TO THE PROPOSED RULES

October 2008

ALBERTA LAW REFORM INSTITUTE

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RULES OF COURT PROJECT

Guide to the Proposed Rules

October 2008

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INTRODUCTION

The Guide to the Proposed Rules is a compilation of general information about the proposed Alberta Rules of Court and the rules project. The guide is released with the final report solely in order to provide a general orientation to the proposed rules. The proposed rules are under review by the government.

A. New Rule Solutions

The Rules of Court Project was launched in 2001 as the forum for rethinking, reforming and rewriting Alberta's civil practice and procedural rules. An extensive consultation effort at the start of the Project revealed three major problems with the existing rules and confirmed that fixing the problems was high on the public priority list.

Members of the Alberta bench, bar and legal community took on the challenge of developing new rules and set the Project objectives:

> Create rules that are clear, useful and effective tools for accessing a fair, timely and cost efficient civil justice system.

Project participants established a rigorous, inclusive and collaborative development process and worked diligently to draft, review and refine rules within a logical scheme. The result is a sustainable set of civil rules that resolves the problems. Here's how:

Problem 1 – The public perception is that it takes too much time and money, and it is too difficult to use the court system.

> **Solution: The proposed rules describe a clear, step-by-step dispute resolution process with deadlines set by the parties. The goals of the process are to minimize the dollar and time costs of litigation and maximize procedural transparency.**

Problem 2 – The rules are long, disorganized and not consistently applied or enforced. This confusion impedes access to justice and frustrates efforts to run an efficient, effective justice system.

Solution: The proposed rules are short, logical, well arranged and written in plain English. It is now easy to find and follow the right rules.

Problem 3 – The old rules are out of date. The last major review was done in 1968 and the rules no longer reflect modern practice.

Solution: The proposed rules blend core principles of procedural justice with the best contemporary legal and administrative practices into a single, comprehensive, consistent procedural code.

B. Rule Organization and User Tools

The proposed rules have 14 Parts, three Schedules and one Appendix. Generally speaking, the Parts and rules are organized to follow the sequence of a legal action. This said, rules for service of documents and most of the technical rules are collected in Parts 11 and 12, respectively. The reasons for this arrangement are that these rules may be applied throughout the course of a legal action and to incorporate them earlier would impede the logical flow of rules that otherwise appear in the same sequence as steps in a legal action.

The rules are divided, numbered and arranged as follows:

- Rules that relate to a particular subject area are grouped into Parts with a number assigned to each Part. For example
  Part 3 - Court Actions
  Part 4 - Managing Litigation
  Part 8 - Trial

- Rules are numbered first with the Part number and then consecutively. For example, in Part 5 the rules are numbered 5.1, 5.2, 5.3 and so on.

- If a rule is divided into two or more identifiable sentences, **subrules** are noted by bracketed numbers, for example 5.1(1), (2), (3).

- If a rule or subrule is further divided into **clauses**, these are shown using bracketed lowercase letters, for example 3.24(a), (b) or 5.1(1)(a), (b).

- **Subclauses** are indicated by bracketed roman numerals, for example 3.24(a)(i),(ii) or 5.1(1) (a)(i),(ii), (iii).

The rules include a consolidated **Appendix** of defined words and phrases. The definitions are an integral part of the rules and have legal effect.

The rules contain two features to help users find and apply the appropriate rule. The first is the highlighted **Information Notes** found before the Table of Contents and throughout the document. Information notes are 'signposts' which provide additional information about the subject and references to related rules that may be helpful. In the electronic copy of the rules, the references to other Parts are hyperlinks. The second feature is a boxed summary section at the beginning of each Part titled ***What this Part is About***. Text found in the notes or boxed portions of the rules document has no legal effect.

C. Interpretation

The primary mechanisms for interpreting a proposed rule are the text, purpose and procedural context of the rule itself. In addition, some of the User Tools contained in the rules and parts of the *Interpretation Act* may help to determine a rule's meaning. If a rule requires further clarification, the Project's Consultation Memoranda and final report may provide some information about the legal and external context of a rule, but only to the extent that the rule reflects the principles or issues explained in the publication. An old rule case that addresses a fundamental principle might occasionally offer insight into a proposed rule, but only if both rules embody the same principle. Early draft versions of a rule have no interpretive value because they are not legislative materials.

D. Implementation

The Project published the proposed rules as part of a final report. The Rules of Court Committee is responsible for making a recommendation to the Lieutenant Governor in Council concerning adoption of the proposed rules. The government is charged with passing the legislation needed to implement the rules and setting the date when the rules take effect. In addition to enacting the proposed rules, legislation will repeal old rules and amend other statutes. For example, the *Civil Enforcement Act* or Regulation will be changed to include many of the provisions currently found in the old rules Part 28, "Enforcement of Judgments and Orders."

E. Rules Project Consultation

The Project was a multi-year, consultative reform effort managed by the Alberta Law Reform Institute with funding assistance from Alberta Justice, the Law Society of Alberta and the Alberta Law Foundation. The Project Steering Committee, which was made up of the eminent legal professionals previously acknowledged, provided leadership and executive guidance throughout the Project.

Consultation activities took place at every stage of the Project. In the first phase, ideas from over 40 open meetings with legal groups, two public forums and the more than 800 responses to a rule reform paper were used to set the Project's scope and process.

In the rule development stage, the knowledge and experience of the legal community powered the rule creation effort. More than 85 members of Alberta's bench and bar generously gave over 30,000 hours of time and talent in the 11 Project working groups to produce 21 Consultation Memoranda and consider approximately 300 sets of response comments. The CM consultations resulted in 9 draft proposed rule documents, including the publicly released TD 3 version, and 25 sets of comments on TD 3.

The final stage of the Project included more than a dozen detailed discussions with the Rules of Court Committee over a period of 20 months. These consultations, supported by hundreds of hours of legal research, resulted in the final changes needed to shape the proposed rules into an efficient, modern, comprehensive procedural code that reflects the best of Alberta's civil litigation practices and traditions.

Part 1 – Foundational Rules

Overview

Part 1 provides the philosophy underlying the rules through purpose and intention statements. These are followed by rules about how the rules are to be interpreted, the remedies the court may give, a general provision about practice and procedural orders that may be made by the court in a legal action, and how the court may deal with contravention and noncompliance with the rules and irregularities. The foundational rules are critical to the interpretation of all other rules.

What's Key?

R 1.2 sets out the purposes and objectives of the rules, and the responsibility of parties to act in accordance with these purposes and objectives.

R 1.3 gives the court wide discretion to grant any remedy or relief provided for in the *Judicature Act* and applicable statutes, whether or not the remedy is expressly requested in pleadings.

R 1.4 introduces practice and procedural orders that the court can make so that the rules work as intended. It lists the practice, procedural, cost, interest and other orders that the court can make. In the event a practice or procedural decision of the court is not written in a formal order, it must be recorded in the court record of the action or endorsed by the clerk on a filed pleading or document.

R 1.5 is a consolidation of the old slip rules. It clarifies that the fundamental approach to rule contraventions, non-compliance and irregularities is to promptly "cure first" with setting aside as a last resort. It states when a cure is, and is not, appropriate. The information note for this rule lists other rules which provide specific methods for fixing specific contraventions.

R 1.7 provides that the main tool of rule interpretation is the text and context of the rule itself.

R 1.8 states that the *Interpretation Act* applies to the rules, with the exception of certain provisions. In particular, provisions of the Act relating to reference aids, calculating time, service and the use of forms and words are excluded.

R 1.9 clarifies that if there is a conflict between the rules and an enactment, the enactment prevails to the extent of the inconsistency.

R 1.10 definitions of words and phrases used in the rules are found in the Appendix.

Part 2 – The Parties to Litigation

Overview

Part 2 includes rules to facilitate actions by and against partnerships, sole proprietors and other entities. It contains rules for when a litigation representative must be appointed, when the parties in litigation may represent themselves and the responsibilities of lawyers of record.

What's Key?

R 2.2 - 2.4 state the ways to bring an action against a partnership and/or individual partners.

R 2.5 provides that a sole proprietor may both sue and be sued using their trade name and clarifies the procedure for disclosure of a sole proprietor's legal name.

R 2.6 describes the rules for a representative action or defence.

R 2.7 - 2.9 provide the rules necessary to start procedures contained in the *Class Proceedings Act*.

R 2.10 states that the court may on application grant intervenor status to anyone and may set the terms of participation as it sees fit.

R 2.11 - 2.20 contains the scheme for a litigation representative to act for minors, vulnerable and dependent adults, missing persons and estates that have no personal representative. Of note, the new term "litigation representative" replaces the old terms of guardian, guardian *ad litem* and next friend.

R 2.11 notes the persons who must have a litigation representative.

R 2.12 describes the 3 types of litigation representatives as

- automatic with authority derived from an enactment, instrument or order under the *Surrogate Rules*. Automatic litigation representatives act pursuant to Rule 2.13,

- self-appointed as in persons who file an affidavit of disclosure and, in the case of an estate, serve notice on beneficiaries and heirs-at-law. The self appointment process is detailed in Rule 2.14, or

- court appointed in accordance with Rules 2.15, 2.16 or 2.21.

R 2.17 provides that the court may appoint a lawyer as the litigation representative and may direct how the costs of the lawyer acting in this capacity are to be paid.

R 2.19 states that, absent an expression of specific authority in an instrument, order or enactment, a litigation representative may only settle, discontinue, or abandon an action with the court's approval.

R 2.20 notes that money, other than a cost award, that is payable to a litigation representative must be paid into court.

R 2.22 states that individuals may represent themselves in court.

R 2.23 provides that a party may have a person assist them before the court and describes the type of assistance that may be given. This is the rule for a *MacKenzie* friend.

R 2.24 - 2.32 describe the rules applicable to lawyers of record. Rules 2.24 and 2.25 are new rules stipulating the role and duties, respectively, of a lawyer of record.

R 2.27 is a new rule which provides that a party may use a lawyer for limited purposes during the course of an action.

R 2.32 reflects a new policy that a lawyer of record will be automatically terminated if the lawyer dies, is suspended or ceases to practice and that a firm automatically ceases to be the lawyer of record if the firm dissolves. It also contains new rules for seeking court directions for the service of documents when a lawyer has been terminated. These provisions are intended to help bridge the procedural gap, if any, between termination and new legal representation.

Part 3 – Court Actions

Overview

This Part describes the process for starting court actions and where to start them. Court actions are started either by filing a statement of claim or by filing an originating application. It contains the requirements for originating applications and the specific rules for originating applications for judicial review.

The Part then describes the documents and procedures for actions started by statement of claim, including rules related to time limits, defences, counterclaims and 3rd party claims. There are also rules for obtaining particulars about a claim, making amendments to, and closing, pleadings, joining or separating claims and parties, dealing with deficiencies, and changes to the parties.

What's Key?

R 3.2 is a new rule which provides that a court action can only be started by filing one of 2 commencement documents, a statement of claim or an originating application, in the appropriate judicial centre. Commencement by statement of claim is the default method. Originating applications are used if there are no facts in dispute or if the matter is governed by statute or subject to judicial review. This rule also gives the court power to make a practice or procedural order if needed to put an action on the correct path.

R 3.3 describes how to ascertain the appropriate judicial centre by reference to nearness of the centre to the Alberta residences and places of business of one or all parties.

R 3.4 includes special subrules for ensuring that actions involving claims for possession of land will proceed in the judicial centre that is nearest to the land or Alberta residence of the defendant.

R 3.6 includes a new requirement that all actions must be conducted in the judicial centre in which they were commenced, or be transferred pursuant to Rule 3.4 or 3.5. This rule preserves the possibility that a matter may, if a court so orders, be conducted in some place other than a judicial centre.

R 3.7 is a new rule which states that a judgment may be enforced in a judicial centre other than the one in which the proceedings have been carried on, after a certified copy of the judgment has been filed in the other judicial centre.

R 3.10 provides that the rules governing management of litigation and disclosure of information do not apply to actions started by originating application, unless agreed by the parties or ordered by the court. This rule preserves administrative law principles that general discovery rules do not apply to judicial reviews, unless there are exceptional circumstances.

R 3.11 provides that applicants and respondents must provide reasonable notice of intent to rely on affidavits in advance of the hearing set for a matter raised by originating application. This rule is consistent with the current practice of filing affidavits at least one month before a hearing and roughly coincident with the filing of briefs.

R 3.15 - 3.24 deal with judicial review. Rule 3.15 consolidates the requirements for making an originating application for judicial review, including the rules that the application must be filed within 6 months of the decision or act that is to be reviewed, and that the Attorney General must be served.

R 3.16 provides that *habeus corpus* may be sought at any time.

R 3.17 states that the Attorney General has the right to appear at a judicial review.

R 3.18 - 3.20 deal with obtaining the record of the proceedings that are being reviewed.

R 3.21 states that no person may be questioned as a witness before the hearing without the permission of the court.

R 3.25 - 3.29 provide the requirements associated with a statement of claim, including the rules for time of service.

R 3.30 - 3.35 deal with defences, demands for notice and replies.

R 3.36 - 3.42 govern default judgments, noting in default and related matters. Rule 3.41 continues a special requirement that a plaintiff must note in default the defendant who fails to file a defence in a foreclosure action before making application for a judgment or foreclosure remedy.

R 3.42	is a new limitation on the use of default judgment or noting in default rules in that these measures can not be applied against a defendant who has made an application concerning the statement of claim, service or proceeding until the defendant's application has been decided.
R 3.43 - 3.55	deal with claims against co-defendants and 3rd party claims. Rule 3.44 broadens the circumstances in which a 3rd party claim can be brought.
R 3.55	specifically states that rules which apply to plaintiffs and defendants also apply to 3rd party plaintiffs and defendants.
R 3.56 - 3.60	deal with counterclaims. Rule 3.58 states that a counterclaim is an independent action.
R 3.60	notes that rules that apply to plaintiffs, defendants, 3rd parties and pleadings also apply to plaintiffs-by-counterclaim, defendants-by-counterclaim and the 3rd parties and pleadings of counterclaims.
R 3.61 - 3.67	cover requests for particulars, contain new and more liberal rules for amending pleadings and provide the rules for closing pleadings.
R 3.69	provides that a party may join 2 or more claims and sue or be sued in more than one capacity within an action. Further, it is not necessary for each defendant or respondent to have an interest in all remedies sought or in every claim in the action.
R 3.70	states the 3 grounds for joining parties.
R 3.71	provides the 2 grounds for separating actions or parties.
R 3.74 - 3.76	deal with adding, removing and substituting parties.

Part 4 – Managing Litigation

Overview

Part 4 puts the responsibility for managing litigation started by statement of claim on the parties and provides a framework to do that. Court assistance, in the form of procedural, interpretive, decision or case management orders, is available to move the case along at any time during the action. For most actions started by statement of claim, the parties must prove that they have engaged in a non-trial dispute resolution process before they will given a trial date. The rules recognize judicial dispute resolution as one means of resolving litigation without a full trial.

Other rules contained in this Part describe the processes for obtaining an order to secure payment of a costs award, settlement, dealing with delay, transfer of interests and liability, and discontinuance of claims and defences.

What's Key?

R 4.1 requires parties to manage their dispute and plan to resolve it in a timely cost effective way.

R 4.2 describes what it means to manage responsibly and requires the parties to participate in one or more dispute resolution processes by which all or part of the case may be resolved short of trial unless the court, on the basis of an application, waives the requirement. Rule 8.4 states that a trial date cannot be set unless the parties engaged in a dispute resolution process or were excused from doing so.

R 4.3 contains provisions for determining whether a case is simple, standard or complex.

R 4.4 sets target dates for completing stages in a simple or standard case.

R 4.5 - 4.6 require the parties to a complex matter to develop a detailed litigation plan and file it with the court.

R 4.9 provides that if a party or the court is not satisfied that the action is being managed in accordance with Rule 1.2 (*i.e.* so as to fairly and justly resolve

the claim in a timely and cost effective way), the court may make a procedural or any other order necessary to move the action along.

R 4.10 - 4.11 state that the court can help manage litigation by

- directing parties to attend a court conference,
- making a practice or procedural order,
- appointing a case management judge, or
- making orders for specific direction or remedies as contemplated under the rules.

R 4.12 - 4.14 describe the case management process.

R 4.17 - 4.21 set the framework for the parties to request a judicial dispute resolution process (JDR). There are rules for asking for a specific judge, upfront agreement as to the JDR ground rules, attendance entitlements, documentation, confidentiality and the judge's involvement after the JDR ends.

R 4.24 - 4.29 set out the court process for settlement through a formal offer and acceptance, with costs consequences if an offer is not accepted and the offeror obtains a better result than that which was offered.

R 4.30 notes that the court settlement process does not apply to an action involving a "defence of tender" unless the defence is withdrawn.

R 4.33 provides for dismissal for long delay. If 2 or more years have passed since an act which significantly advanced an action, the court, on application, must dismiss unless one of four criteria are met. Of note, the court cannot extend or vary a time period under Rule 4.33. The procedures for extending time are found in Part 12.

Part 5 – Disclosure of Information

Overview

Part 5 describes the information that must be disclosed by the parties to a court action and when and how the parties may question each other about the case. Early disclosure of facts and admissions helps parties to evaluate the case and can facilitate early resolution of the dispute. This Part also deals with expert reports and medical examinations by health care professionals. The substance, but not the form, of most of the old discovery rules continues in the new rules.

What's Key?

R 5.1 provides that the purpose of this Part is to obtain evidence, narrow and define issues, encourage early disclosure, facilitate evaluation of positions and issue resolution, and to discourage conduct that causes unnecessary delay or increases costs.

R 5.2 describes the relevant and material test that is used to determine if information should be disclosed.

R 5.4 states that a corporate representative appointed to undergo questioning on behalf of the corporation has a positive duty to prepare and inform themselves of relevant and material records and information prior to giving evidence. In addition, the court may order a representative to get up to speed or may, if the representative is not suitable, appoint a different one.

R 5.5 states that a plaintiff must serve the affidavit of records within 3 months of being served with the first statement of defence; a defendant, within one month of service of the plaintiff's affidavit of records; and a 3rd party defendant, within 3 months of filing a defence.

R 5.6 - 5.8 prescribe the form of the affidavit of records that is to be used to disclose all records relevant and material to the issues in the action. Rules include means for describing documents as bundles and noting a record for which privilege is claimed together with the type of privilege and grounds.

R 5.9 states that an affidavit of records may only be sworn by an agent if the other parties agree or the court so orders.

R 5.10 contains the ongoing duty to disclose omitted or new records.

R 5.12 sets the potential for double tariff cost penalties for inexcusable delay in producing an affidavit of records and for failure to disclose subsequent records or comply with a record disclosure order.

R 5.17 states that a party adverse in interest, the corporate representative and officers, former officers, and persons who are or were employees of a corporate party and acquired information because of their office or employment may be questioned about relevant and material records and information.

R 5.18 provides that other persons who have provided services to the corporation may be examined under some circumstances.

R 5.23 stipulates that a person, other than a corporate representative, must be reasonably prepared to answer questions and bring non-privileged records that might be required to the questioning.

R 5.22 provides for written questions and answers.

R 5.25 sets the rules for appropriate questions and grounds for objection.

R 5.27 contains the ongoing duty to correct answers that were or become incorrect.

R 5.29 prohibits reading in at trial of evidence given on prior questioning by a corporate witness unless a corporate representative acknowledges that the evidence is information of the corporation.

R 5.30 defines and describes the undertaking process. This is the a process whereby a person who does not know the answer to a question may, in some circumstances, be required to give an undertaking to inform themselves and provide the answer.

R 5.31 provides for the use of the evidence in the transcript of a corporate representative or witness' questioning at trial or on an application if the corporate representative has acknowledged that the evidence is information of the corporation under Rule 5.29.

R 5.32 states that transcripts, affidavits of records, affidavits, written answers to questions and corrections must not be filed unless needed to support an application proceeding or trial.

R 5.33 is a new rule that states that all information disclosed is confidential and may only be used for purposes of the action, unless otherwise ordered by the court, the parties agree or permitted by law.

R 5.34 - 5.40 govern the use of experts in civil litigation. Expert is a defined term contained in the Appendix.

R 5.34 prescribes the form of the expert report in order to facilitate the exchange of useful and comprehensive information.

R 5.35 sets a scheme for the sequential exchange of expert reports.

R 5.37 provides that an expert may be questioned prior to trial in exceptional circumstances.

R 5.38 states that an expert has a duty to disclose any changes in opinion that occur following preparation of the report.

R 5.39 describes the process for using an expert report at trial without calling the expert as a witness.

R 5.41 - 5.44 set the process for medical examinations and reports. The Appendix contains an expanded definition of the type of health care professionals who may conduct a medical examination.

R 5.41 states that a medical examination may be ordered if the physical or mental condition of a person is at issue. Of note, under Part 10 the court may order, on its own initiative, a medical examination in the context of a civil contempt of court process.

R 5.42 is a new rule giving the person being examined the options of having a nominee attend the examination or having the examination videotaped or recorded, word for word.

Part 6 – Resolving Issues and Preserving Rights

Overview

Part 6 contains the rules for making applications to obtain court directions or to resolve issues arising during the course of the litigation. The Part provides procedures for questioning on affidavits and applications and for the court's use of experts, referees and receivers. Part 6 also includes:

- rules for obtaining evidence outside Alberta,
- orders for the protection and inspection of property, and
- rules respecting replevin orders and interpleader proceedings.

What's Key?

R 6.1 states that this Part governs all applications to court except originating applications.

R 6.3 establishes the application process, including the requirement of notice 5 days before the application hearing or consideration date unless notice is dispensed with under Rule 6.4.

R 6.6 describes the notice requirements associated with a foreclosure action in terms of who must be served depending on the nature of the foreclosure action contemplated.

R 6.8 - 6.9 provide for questioning on affidavits and questioning of witnesses to obtain evidence for hearings.

R 6.10 - 6.11 provide ways in which applications may be considered, including personal attendance, electronic hearings and document consideration.

R 6.14 is a new rule that requires an application to be recorded where only one party appears unless a judge orders otherwise.

R 6.15 provides for an appeal of a master's order and states that the appeal is on the record, not a new hearing.

R 6.16 describes the orders which a judge may make in connection with an appeal from a master's decision.

R 6.21 requires a party in need of an interpreter for questioning purposes to provide reasonable notice of the need to the party conducting the examination. The examining party shall then provide an impartial and competent interpreter at their expense.

R 6.23 - 6.25 modernize and consolidate the processes for taking evidence outside of court and outside of Alberta.

R 6.26 is a new rule authorizing the Alberta court to assist an extra-territorial judicial authority in obtaining evidence from a person in Alberta.

R 6.27 - 6.29 contain rules for preservation, protection, inspection and disposition of property.

R 6.30 - 6.38 are new rules that reflect the processes related to restrictions on media and public access to court materials and proceedings.

R 6.50 - 6.55 govern the replevin process. Of note, clerks can no longer issue replevin orders.

R 6.53 provides that only a civil enforcement agency can enforce a replevin order and that personal property may not be given to the applicant without a further court order.

R 6.55 provides that a replevin order acquired without notice expires pursuant to its terms. An order with notice expires the earlier of dismissal of an action or 2 months from date of judgment in favour of the applicant.

R 6.56 - 6.67 apply to proceedings for an interpleader order which may be started by way of originating application or, if the applicant is party to an action respecting personal property, by application.

R 6.56 contains specialized definitions that apply in the context of interpleader proceedings.

Old rules related to the examination of a debtor, which are currently called examination in aid of execution, will be moved to the *Civil Enforcement Act* or Regulation.

Part 7 – Resolving Claims Without a Full Trial

Overview

Part 7 includes the rules to apply for judgment on admissions or records, summary judgment, judgment in a summary trial and trial of particular questions or issues, including issues of law.

What's Key?

R 7.1	describes how a court may hear and decide a particular question or issue before, at or after trial.
R 7.2	states that summary judgment may be applied for at any stage of the action and there is no requirement to wait for the filing of a statement of defence.
R 7.5 - 7.9	describe the summary trial proceeding as a one-stage procedure, rebuttable on application by the respondent.
R 7.10	stipulates that the judge who conducted a summary trial remains seized of the matter and must preside at any full trial.

Part 8 – Trial

Overview

Part 8 contains rules for the mode, scheduling and the conduct of a trial.

What's Key?

R 8.1 provides that judge alone is the default trial mode.

R 8.2 - 8.3 describe the process for requesting a jury trial.

R 8.4 states that one or more parties can request a trial date. The clerk must schedule a trial if the parties can show that they have completed specific steps, including having engaged in, or been exempted from a dispute resolution process and have concluded the disclosure process. To schedule a trial date using this rule, the exchange of expert or medical reports, questioning and undertakings must be complete.

R 8.5 allows the court, on application, to set a trial date if satisfied that dispute resolution measures were taken or waived and that parties are or should be ready by the trial date. This rule permits the court to issue a practice or procedural order to facilitate conclusion of the activities which must be completed prior to getting a firm trial date.

R 8.6 is a new rule which states that the clerk will give notice of a scheduled trial date. In addition, a trial may not be abandoned, adjourned or dates changed without court permission.

R 8.7 states that a trial date, length and the estimated number of witnesses must be confirmed 3 months or more before the trial date. If only one party confirms, the trial goes ahead, unless the court otherwise orders. If no one confirms, the trial is cancelled.

R 8.10 prescribes the order for presenting evidence and statements at a trial including when opening and closing statements may be made by the parties.

R 8.12 describes when a witness may and may not be excluded from the courtroom.

R 8.22 is a new rule providing for jury trials to continue by judge alone in certain circumstances.

R 8.23 states that the court, in pronouncing judgment in a jury trial, may draw inferences of fact that are not inconsistent with the jury's findings.

Part 9 – Judgments and Orders

Overview

Part 9 includes rules for preparing, entering, correcting, setting aside and enforcing court judgments and orders. This Part describes how a civil enforcement agency may enforce court pronouncements and contains the rules for abandoned goods. Part 9 also deals with how judgments and orders from jurisdictions other than Alberta.

What's Key?

R 9.2 states that the successful party, unless otherwise ordered, is responsible for preparing and serving a draft judgment or order within 10 days of the pronouncement of the judgment or order and that the other parties have 10 days to approve or reject the draft. If the draft judgment or order is not expressly approved or rejected, it may be signed and entered.

R 9.3 provides that disputes concerning content of orders or judgments must be resolved by the court, not the clerk.

R 9.4 provides for the signing of the order by the judge or master or, in some circumstances, by the clerk.

R 9.5 requires judgments and orders to be entered within 3 months of pronouncement. Judgments and orders may not be entered beyond the 3 month period without the court's consent.

R 9.8 states that the party entering judgment or the order must serve a copy on every other party.

R 9.9 - 9.11 provide for determination of continuing damages, judgment for the balance owing when determining a counterclaim and a judgment or order against beneficiaries for the administration of an estate.

R 9.12 provides that the court, on application, may correct a mistake in a judgment or order that occurred because of an accident, slip or omission.

R 9.14 allows the court, on application, to make further orders in a matter after entry if doing so does not require changes to the original order and the subsequent order is needed.

R 9.15 contains all the rules for setting aside, varying or discharging an order or judgment.

R 9.16 states that the applications to correct mistakes, issue further orders or change judgments or orders must, unless otherwise ordered, be made to the master or judge who issued the original judgment or order.

R 9.21 stipulates that a judgment creditor may apply for a new judgment or order in respect of unsatisfied parts of a judgment but the application must be made within the limitation period set under the *Limitations Act*.

R 9.23 describes enforcement of judgments and orders against partnerships.

R 9.24 applies to fraudulent preferences and conveyances.

R 9.28 contains provisions that apply when personal property is left behind by a person evicted or forced to vacate lands or premises.

R 9.29 states that the court, on application, may order a person to be questioned in order to assist in the enforcement of a judgment or order.

R 9.30 - 9.36 describe the process and associated orders in a foreclosure action.

R 9.34 contains a new subrule that prevents an order confirming sale from being registered in the Land Titles Office before appropriate evidence showing that payment of the amount ordered by the court has been paid into court or the plaintiff has received the money.

R 9.35 provides for the calculation by the clerk of amounts owing after the court has made a declaration of the balance due, an order for sale to the plaintiff, an order confirming sale or granted judgment against any party in a foreclosure action. The rule also requires the plaintiff to file and serve the appropriate documents.

R 9.36 requires the plaintiff in a foreclosure action to serve the certified bill of costs on every defendant and subsequent encumbrancer once they have been served with an order under r 9.35(1).

R 9.40 - 9.49 describe the process for enforcement of United Kingdom judgments.

R 9.50 - 9.52 provide the process for registering judgments in accordance with the *Reciprocal Enforcement of Judgments Act*.

Part 10 – Lawyer's Charges, Recoverable Costs of Litigation, and Sanctions

Overview

Part 10 provides the rules for how lawyers may provide and charge for legal services and includes rules for a review officer to review retainer arrangements, lawyer's charges and contingency fee agreements. There are rules for appealing the decision of a review officer. This Part also contains the rules which establish a successful party's entitlement to recover some of the costs of litigation and give the court discretion as to the amount to be recovered. Other rules state how the court or the assessment officer is to assess the recoverable costs and describe procedures for appealing the cost decisions of an assessment officer or the court.

Part 10 rules also describe the sanctions for not complying with the rules and the process the court may use to declare that a person is in civil contempt.

What's Key?

R 10.1 - 10.8 govern lawyer charges and fee arrangements.

R10.3 permits a lawyer, if properly authorized, to charge lawyer's fees when acting as guardian, mortgagee, personal representative or trustee.

R 10.4 allows the court to make an order charging property as security for payment of a lawyer's charges.

R 10.9 provides that the reasonableness of a retainer agreement, including a contingency agreement, and a lawyer's charges may be reviewed by a review officer.

R 10.10 sets the limit for review of a retainer agreement at 6 months after the agreement ends.

R 10.11 states that either a lawyer or client may arrange for a review appointment and must file and serve appropriate documents.

R 10.12 provides that if a lawyer receives notice of a review appointment, the lawyer must send in a signed account 5 days before the appointment or risk forfeiture of the right to payment for any amounts that are subject to review.

R 10.13 states that a retainer agreement filed in support of a review is confidential, unless otherwise ordered by the court.

R 10.14 allows a review to proceed despite the absence of a person served with notice of the appointment.

R 10.17 gives the review officer power to allow, vary, reduce or disallow lawyers' charges.

R 10.18 provides that, on application, the court may adopt a decision of a review officer as a judgment or order of the court.

R 10. 22 provides a process for a review officer to make a decision concerning the amount of a lawyer's charges payable in the event the lawyer ceases to act in a matter.

R 10.24 states that the appeal of a review officer's decision is to a judge and is an appeal on the record.

R 10.26 - 10.43 govern recoverable costs of litigation. Rule 10.26 expands the definition of party to include a person making or participating in an application or proceeding for the purposes of awarding costs.

R 10.27 contains the general rule that a successful party is entitled to costs against the unsuccessful party, with the exception that a decision concerning costs for an application where only one party appears may be deferred until later in the action.

R 10.28 states that costs for interim applications and decisions are payable immediately.

R 10.29 contains new rules providing for the award of pre-action costs and costs to successful self-represented litigants.

R 10.30 describes special factors to be considered in an award of costs in a class or representative action.

R 10.31 contains the general list of things to be considered when determining costs.

R 10.32 provides that the court may order an assessment officer to assess costs.

R 10.33 states that the party entitled to costs must prepare and submit a bill of costs in prescribed form to the assessment officer.

R 10.35 describes the process for cost assessment appointments and requires the successful party to file and serve the bill of costs 10 days before the appointment and, if the appointment is made by the unsuccessful party, that party must serve notice of the appointment and request a bill of costs 20 days before the appointment.

R 10.38 provides that an assessment may proceed in the absence of a party served with a notice of the appointment.

R 10.39 lists the factors an assessment officer is to consider and states that the maximum amounts that may be awarded are as set in Schedule C.

R 10.40 states that costs are reduced when a case that could have been decided in Provincial Court has been heard by the Queen's Bench.

R 10.42 provides for the cost decision of an assessment officer to be appealed to a judge as an appeal on the record.

R 10.44 states that review and assessment officers can take actions as may be required under other enactments and that the rules apply to those proceedings.

R 10.45 describes the cost liability of litigation representatives. A plaintiff's representative is liable for costs. A defendant's representative is only liable if the representative has engaged in serious misconduct or if the court orders.

R 10.46 stipulates that a party entitled to costs is also entitled to recover the goods and services tax on those costs.

R 10.47 provides that the court may order a party, lawyer, or other person who has contravened the rules to pay a penalty in costs.

R 10.48 provides that the court may order a lawyer who has engaged in serious misconduct to pay costs to a person named in the order.

R 10.49 - 10.51 contain the rules for a civil contempt of court proceeding, including sanctions.

R 10.52 states that a judge may order a medical examination in connection with a civil contempt matter.

R 10.53 provides that the court, as a superior court, has inherent power and full discretion to punish and cite in contempt those who disobey the court or display contempt for any court process.

Part 11 – Service of Documents

Overview

Part 11 sets out the rules for how commencement and other documents related to an action must be served inside and outside Alberta. It also contains the rules for validating, setting aside and proving service, as well as the rules for substitutional service.

What's Key?

R 11.1 - 11.17 govern service of commencement documents on various persons and other entities.

R 11.1 provides that either the original or a copy of the original may be served, unless otherwise ordered.

R 11.3 provides the rule for serving an individual.

R 11.10 describes how to serve a sole proprietor.

R 11.11 contains the rule for serving a corporation doing business under a name other than the corporate name.

R 11.12 describes how to serve a statutory or other entity.

R 11.15 provides the rules for service on a party's lawyer of record.

R 11.16 states that a self-represented litigant may accept service of a commencement document, in writing.

R 11.18 - 11.21 describe the service requirements for non-commencement documents.

R 11.18 provides that a non-commencement document must be served in Alberta by a method of service specified for service of a commencement document, by an electronic method if an address has been given for that purpose, or by recorded mail.

R 11.19 provides for service by electronic methods.

R 11.22 contains additional methods for service in a foreclosure action.

R 11.24 states that a commencement document can be served outside Alberta only if there is a real and substantial connection between Alberta and the facts of the case, or as permitted by court order if service is effected outside Canada. This rule also describes the real and substantial connection test.

R 11.26 provides that the court, on application, may make an order validating service of a document served inside or outside of Alberta by methods other than as set forth in the rules.

R 11.27 deals with substitutional service.

R 11.28 provides for dispensing with service.

R 11.29 describes how to prove that service has been effected.

R 11.31 contains the rule for service in Alberta of foreign process or citation.

Part 12 – Technical Rules

Overview

Part 12 contains rules about when judges may act in place of each other, calculating time, the content and filing of documents, affidavits and exhibits, payments into and out of court, and the responsibilities of court officers.

What's Key?

R 12.1 states when one judge may replace another.

R 12.3 describes how to count days. When counting days to or from an event, do not include the day of the triggering event or activity. Time periods of less than one month are expressed in days and longer periods in months or years.

R 12.4 describes how to count months and years. When counting months or years to or from an event, use the event date and count off to the same numbered day in the successor or prior month or year. If there is no such date, (e.g., some months do not have a 29th, 30th or 31st day), the count ends on the last day of the target month.

R 12.5 contains rules for extending a time period by agreement of the parties. It also provides for the court to stay, extend or shorten a time period unless a rule otherwise provides. Time for filing a statement of claim or originating notice for judicial review are 2 periods which may not be extended by operation of Rule 12.5.

R 12.6 maintains the fact pleading system.

R 12.7 provides that particulars must be provided in actions involving allegations of breach of trust, fraud, misrepresentation, wilful default, undue influence and defamation.

R 12.10 is a new rule that limits the content of reply pleadings to admissions or responses to matters of fact raised for the first time in the statement of defence.

R 12.13 - 12.32 contain requirements for all filed documents including pleadings, forms, affidavits and exhibits.

R 12.16 allows for insubstantial deviations from prescribed forms, if the deviation does not adversely affect the substance of the information and is not intended to mislead.

R 12.19 notes the 2 types of affidavits and states that an affidavit used in support of an application that may finally resolve all or part of a matter must be based on personal knowledge, not hearsay.

R 12.23 describes the process for swearing an affidavit when a person is unable to read the affidavit.

R 12.24 provides for affidavits to be translated into a language that a person understands before sworn, or to be sworn in another language and translated for court use.

R 12.33 - 12.38 contain rules for the payment of various court fees consistent with Schedule B.

R 12.39 is a new rule that describes a judge's fiat.

R 12.40 - 48 define the officers of the court as the clerk, deputy clerk, sheriff and deputy sheriff and other duly authorized persons.

R 12.42 describes the authority of the court clerk.

R 12.45 lists the clerk's duties.

R 12.47 governs court reporters.

R 12.49 - 12.56 describe when and how money may be paid into court, invested and paid out of court.

R 12.49 is a new rule that states the 3 situations where money may be paid to court.

Part 13 – Appeals

New rules for civil appeals to the Court of Appeal will be developed and incorporated as Part 13 at a later date.

Part 14 – Transitional Provisions and Coming Into Force

Overview

Part 14 provides the rules necessary for transition.

What's Key?

R 14.1 defines terms needed for the purposes of transition.

R 14.2 states that the new rules apply to all proceedings. If a matter fits the exceptional circumstances that are described in the new rules, or if the court so orders, it may continue under the old rules.

R 14.3 states that the dispute resolution requirement does not apply to a matter that has a trial date.

R 14.4 provides that parties to a complex case do not need to comply with certain litigation management requirements if a trial date is set.

R 14.5 describes the bridging provisions necessary to accommodate the long delay period changing from 5 years to 2 years.

R 14.6 grandfathers contingency fee agreements entered into prior to May 1, 2000 provided such agreements were filed with the court in accordance with the old Rule 617.

R 14.7 contains a procedure for applying to the court for an order resolving the matter of whether the old or new rules apply to an action or application and making appropriate adjustments.

R 14.9 provides the coming into force date for the new rules.

Schedules

Schedule A — **Forms** includes all the forms prescribed by the rules for use under the rules.

Schedule B — **Court Fees and Witness and Other Allowances** prescribes court fees payable and allowances payable to witnesses, jurors and experts.

Schedule C — **Tariff of Recoverable Fees** sets out a series of fees for services performed in a legal action to which reference may or will be made by the court or an assessment officer.

Appendix – Definitions

The Appendix definitions apply to all the rules. There are very few Part or rule-specific definitions. The following are some of the key changes to rule definitions:

- **assessment** and **review officers** are defined, and **taxation** is not used
- **court** includes a Queen's Bench judge or master
- **encumbrance, foreclosure action, land, secured land,** and **property** are all defined
- **expert** is any person who is entitled to give expert opinion evidence
- **health care professional** includes doctors, dentists, occupational and physical therapists, nurses, psychologists, chiropractors and persons registered in those professions in other jurisdictions if agreed by the parties or approved by the court
- **litigation representative** replaces guardian, guardian ad litem and next friend
- mortgaged property is recast as **secured property**
- order nisi is now a **redemption order**
- **prescribed form** means the appropriate form as found in Schedule A, properly completed and modified if necessary
- **relevant and material** is defined for disclosure of information in rule 5.2
- **rules** include the Schedules and Appendix